IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4070 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NITISHRI NON-TRADING CORPORATION,THROUGH PRESIDENT

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:

MR RA MISHRA for Petitioner

MR SUDHANSHU PATEL, AGP for Respondent No. 1 to 3

MR RAVINDRA SHAH for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/11/2000

ORAL JUDGEMENT

In this matter rule was issued by the Court (Coram : M.R.Calla, J.) on 1-5-2000 and show cause notice for interim relief was also issued. On last adjournment, learned advocate for the petitioner had drawn attention of this Court that the learned advocate for the respondent No.4 has filed sick note and, therefore, the petitioner is not in a position to proceed further with

the matter. Therefore, this Court requested learned advocate Mr. Joshi to make some suitable arrangement and Mr. Joshi had given assurance to this Court that if learned advocate for the respondent No.4 will not be available on the next adjournment, some suitable arrangement will be made. Therefore, today, Mr. Joshi appeared on behalf Mr. R.R.Shah for the respondent No.4.

2. I have heard learned counsel Mr. M.H.Diamakumar for Mr. B.A.Mishra for the petitioner, Mr.Sudhanshu Patel for the respondent Nos.1 to 3 and Mr. Joshi for Mr. R.R.Shah for the respondent No.4. Learned counsel appearing for the respective parties have argued at length. I would like to mention that learned counsel for the petitioner has not argued regarding two concurrent orders passed by the Board of Nominee and confirmed by the Gujarat Cooperative Tribunal, but he has relied upon decisions reported in 41 (1) G.L.R. page 842 and 1984 (4) S.C.C. page 607 and argued that the amended byelaws have not been accepted by the High Court and the same were declared as illegal and, therefore, in this society which came into existence in the year 1949 and the amendended byelaws came into existence in the year 1989, the byelaws cannot be amended in view of the aforesaid decisions.

3. But the fact remains that for the same dispute the present parties have filed suit before the Board of Nominee Court and the Board of Nominee Court has granted interim relief which has been confirmed by the Gujarat Cooperative Tribunal and therefore, prayer 13 (a) made in this petition cannot be granted at this stage. So far as prayer 13 (b) is concerned, it can be granted at the time of final hearing and not at this stage. So far as prayer 13 (d) wherein the petitioner asked for police protection is concerned, special separate remedy is available to the petitioner and this Court cannot pass any order in this regard. However, for asking protection, the the petitioner is at liberty to file appropriate proceeding before the appropriate Court. So far as question regarding prima facie case is concerned, learned counsel for the petitioner has drawn my attention towards the disturbed area permission granted by the State Government and also drawn my attention towards the permission granted by the society and in this regard Mr. Joshi has drawn has my attention towards the affidavit filed by Mr. Gopilal Samnani which is contrary to the permission. It may be noted that a specific suit has been filed on the ground of fraud and which has been specifically pleaded in this petition by way of reply. Keeping in mind all the above aspects when I asked a specific question that

whether due permission is granted by the society, it is replied that till today no such permission has been granted by the society. Therefore, in view of the aforesaid facts and circumstances of the case, interim relief granted by Board of Nominee Court on 9-1-98 is required to be rejected and is hereby rejected. In view of the facts and circumstances of the case, the Board of Nominee is hereby directed to expedite the suit and if possible to dispose of the same within a period of six months from today. Subject to the aforesaid direction, this petition stands disposed of. Rule discharged. Interim relief stands vacated.

(R.P.Dholakia,J.)

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